





## Electricity Regulation 2011

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Law

Business

Research

<b>Austria</b> Christian Schmelz and Bernd Rajal <i>Schoenherr</i>	<b>3</b>
<b>Brazil</b> Maria Aparecida Seabra Fagundes, Rafaella Ferraz and Flávia Pacheco <i>Araújo e Policastro Advogados</i>	<b>11</b>
<b>Bulgaria</b> Shana Kaloyanova and Frank Schmitz <i>Coeler Legal Consulting EOOD</i>	<b>18</b>
<b>Canada</b> Chad Eggerman <i>WMCZ Lawyers-Mediators</i>	<b>24</b>
<b>Chile</b> José Manuel Larraín Ríos <i>Larraín Rozas, Lackington, Rencoret &amp; Urzúa Abogados</i>	<b>34</b>
<b>China</b> Edward E Lehman and Aldo Settimio Boni de Nobili <i>Lehman, Lee &amp; Xu</i>	<b>41</b>
<b>Colombia</b> Andrés De La Rosa Martínez <i>Cavelier Abogados</i>	<b>49</b>
<b>Croatia</b> Miroљjub Maćešić and Ivana Manovelo <i>Maćešić and Partners</i>	<b>57</b>
<b>Czech Republic</b> Václav Rovenský <i>Kocián Šolc Balaščík</i>	<b>62</b>
<b>Ecuador</b> Diego Ramirez <i>Fabara &amp; Campaña</i>	<b>71</b>
<b>Finland</b> Hans Sundblad and Petri Vesa <i>Peltonen, Ruokonen &amp; Itäinen, Attorneys-at-Law Ltd</i>	<b>75</b>
<b>Germany</b> Thomas Funke <i>Osborne Clarke</i>	<b>80</b>
<b>Greece</b> Yannis Kelemenis and Konstantina Soultati <i>Kelemenis &amp; Co</i>	<b>86</b>
<b>Hungary</b> Andrea Jádi Németh and Péter Garancsi <i>bpv Jádi Németh Attorneys at Law</i>	<b>93</b>
<b>Ireland</b> Alex McLean, Patrick McGovern and Claire Madden <i>Arthur Cox</i>	<b>100</b>
<b>Israel</b> Uri Noy, Yehudit Libin and Michal Merling <i>Erdinast, Ben Nathan &amp; Co Advocates</i>	<b>108</b>
<b>Italy</b> Marco Sella and Alessia Marconi <i>Macchi di Cellere Gangemi</i>	<b>115</b>
<b>Mexico</b> Rogelio López-Velarde and Amanda Valdez <i>López Velarde, Heftye y Soria</i>	<b>121</b>
<b>Nigeria</b> Babatunde Irukera and Ikem Isiekwena <i>SimmonsCooper Partners</i>	<b>128</b>
<b>Panama</b> Erika Villarreal Zorita and Nadia de Halman <i>Anzola Robles &amp; Associates</i>	<b>137</b>
<b>Paraguay</b> Luis A Breuer, Magali Rodríguez-Alcala and Hugo Alexander Berkemeyer <i>Berkemeyer Attorneys &amp; Counselors</i>	<b>144</b>
<b>Poland</b> Jerzy Baehr and Jakub Pokrzywniak <i>Wierciński Kwieciński Baehr Spk</i>	<b>148</b>
<b>Romania</b> Gabriela Cacerea and Mirela Preda <i>Nestor Nestor Diculescu Kingston Petersen</i>	<b>154</b>
<b>Russia</b> Alexander Khrenov and Andrey Lebedev <i>Yukov, Khrenov and Partners</i>	<b>163</b>
<b>Turkey</b> Değer Boden Akalin and Seda Gümüş <i>Boden Law Office</i>	<b>170</b>
<b>United Kingdom</b> Peter Willis, David McGowan and Louise Macleod <i>Dundas &amp; Wilson LLP</i>	<b>178</b>
<b>United States</b> Michael S Hindus, Robert A James, Joseph H Fagan and Becky M Bruner <i>Pillsbury Winthrop Shaw Pittman LLP</i>	<b>188</b>
<b>Vietnam</b> Tran Duc Hoai and Nguyen Thanh Ha <i>Vietbid</i>	<b>199</b>

# Czech Republic

Václav Rovenský and Ján Béreš

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## 1 Policy and law

What is the government policy and legislative framework for the electricity sector?

The electricity sector in the Czech Republic, as an energy sector subsystem, is regulated by a range of legal regulations of different legal power. The conditions for doing business, regulation and public administration in the energy sectors are set forth in Act No. 458/2000 on conditions for doing business and for public administration in the energy sectors (Energy Act). Act No. 406/2000 on energy management (Energy Management Act) sets forth measures for increasing the effectiveness of the use of energy and obligations of natural persons and legal entities, as well as rules for preparation of the State Energy Concept, Regional Energy Concept and National Programme for Energy Saving and for Utilisation of Renewable Energy Sources. It also sets forth requirements for the ecological design of energy appliances. Act No. 180/2005 on promotion of electricity generation from renewable sources (Alternative Energy Act) extensively covers generation from renewable sources. The Czech Republic has implemented secondary EC legislation in the above regulations, including Directive No. 2003/54/EC concerning common rules for the internal market in electricity and repealing Directive No. 96/92/EC and Directive No. 2001/77/EC on the promotion of electricity produced from renewable energy sources in the internal electricity market and others. Act No. 158/2009, on the Amendment of the Energy Act and of Certain Other Acts (2009 Amendment), introduced substantial and complex changes of the Energy Act in order to achieve strict conformity with EC legislation. Actually a new implementation legislation in the Czech Republic is expected as the new directive No. 2009/72/EC, repealing Directive No. 2003/54/EC sets forth that it should be implemented within 2011; certain provisions of Directive No. 2009/28/EC repealing Directive No. 2001/77/EC shall also take effect that year.

In addition to EC Regulation No. 1228/2003 on conditions for access to the network for cross-border exchanges in electricity, and EC Regulation No. 714/2009, which repeals the former and shall take effect from 2011, electricity cross-border exchanges are governed by the Energy Regulation Office (ERO) Decree No. 541/2005, mentioned below. The ERO, as the energy regulation public authority, issues decrees and decisions on the basis of the powers delegated thereto in the Energy Act. The most important decrees among the wide scale of regulations are Decree No. 541/2005 on the electricity market rules, the principles for setting the prices for activities of the Electricity Market Operator (EMO – pursuant to the 2009 Amendment, the title of the entity changed into ‘market operator’, as it was newly vested with powers related to the gas market; therefore, the word ‘electricity’ is no longer applicable; however, it has been decided to preserve the previous widely recognised acronym EMO as the name of both the electricity and gas market operator) and on implementing some other regulations set forth by the Energy Act, Decree No. 475/2005, implementing some of the regulations set out by the Alternative Energy Act, and Decree No. 426/2005 on

details regarding the energy sectors business licensing. The Ministry for Industry and Trade (MIT) also issues decisions and decrees within the powers delegated thereto by the Energy Act, and further, the Energy Management Act, for instance Decrees No. 80/2010 and No. 79/2010, both focusing on regulation of certain issues regarding the state of emergency in the energy sector.

Electricity policy in the Czech Republic closely follows EU Energy Policy. Apart from the Energy Act, Energy Management Act and the Alternative Energy Act, Czech electricity policy is expressed in the State Energy Concept (SEC), which constitutes a strategic document with a 30-year outlook. It determines the scope of energy management in accordance with the necessities of economic and social development and environmental protection. The SEC was prepared by the MIT pursuant to the Energy Management Act and approved by the Czech government in 2004, and the fulfilment of the scope, priorities and tools set therein is reviewed by the MIT periodically not later than every five years, when the MIT informs the government of its conclusions. Where necessary, the MIT submits proposals to the government to amend the SEC. Currently, the new amended SEC wording as of February 2010 has been prepared by the MIT. The main priorities mentioned in the amended SEC include reliability, security, an environmentally friendly approach with respect to energy supplies, fair competition and sustainable development. The SEC refers to the basic principles of the EU Energy Policy, which has been newly constituted in accordance with the new definition of the same within the Lisbon Treaty. Pursuant to the SEC, regional energy plans are developed by Czech regions, the City of Prague and the ‘statutory cities’ of the Czech Republic.

Pursuant to the requirements set forth by EC Directive No. 2003/54/EC (with respect to the electricity sector), since 2005, the Czech Republic has been submitting national reports on the electricity and gas energy sector for the relevant year to the European Commission, updating it on the developments in these sectors. The reports are accessible online and contain plenty of useful information about the Czech Republic’s energy sector.

## 2 Organisation of the market

What is the organisational structure for the generation, transmission, distribution and sale of power?

The electricity market in the Czech Republic is composed of the following participants defined in the Energy Act: electricity producers (EPs), the transmission system operator (TSO), distribution system operators (DSO), the EMO, electricity traders (ETs) and customers (ECs).

All the activities at the electricity market, namely, electricity generation, transmission, distribution, trading and the activities of the market operator, are subject to licensing. Licences are granted by the ERO. The licences for transmission and market operation are exclusive. All licences, except for trading (five years) and market operation (fixed term of 25 years), are granted for a period not exceeding 25

years. Licences are not necessary, for example, for distribution of electricity to tenants of apartments or offices by the building owner; in such cases the expenses for purchase of the electricity are divided among the users. Under the 2009 Amendment, procedures and requirements set forth by the Energy Act were simplified.

The Energy Act sets out the implementation schedule for the complete liberalisation of the electricity market. The electricity market was opened in several progressive steps, which took place from 2002 until 2006. Since 1 January 2006, when the last group of customers – households – became authorised customers and obtained the right to choose an electricity supplier, the market has become fully liberalised. Only activities of a monopoly-like nature remain regulated, such as transmission and distribution of electricity and activities related to ensuring the electrical grid stability both from a technical and commercial point of view (for example, prices of services provided by the EMO are regulated by the ERO). Pursuant to EC Directive No. 2009/72/EC, the third liberalisation package has been adopted, which must be implemented within the stipulated terms into the national legislation of the Czech Republic. At present, no special implementation law has been adopted to implement the said directive.

CEPS is the only TSO operating the transmission grid in the Czech Republic (consisting of 400kV, 220kV and selected 110kV wires). CEPS is responsible for transmission of electricity through the transmission grid, as well as for development of the grid, and for providing system services to ensure a secure and reliable operation of the grid. CEPS is also responsible for cross-border electricity transmission and, pursuant to the current version of SEC, this responsibility should remain with CEPS in the future.

Distribution of electricity (110kV voltage level and lower) is provided by three regional DSOs with each having more than 90,000 customers; their facilities are connected directly to the transmission system. Pursuant to Directive No. 2003/54/EC and the implementation legislation (namely, the Energy Act), the ‘unbundling procedure’ took place; since 1 January 2007, DSOs with more than 90,000 ECs can not simultaneously be the holders of licences for electricity generation, electricity transmission and electricity trading. Apart from the regional DSOs, there are local DSOs connected to the regional distribution grids. These DSOs distribute electricity in the areas set forth in the distribution licences.

ERO Decree No. 140/2009 on the manner of regulation of prices in energy sectors and procedures for regulation of prices stipulate the structure of prices for electricity in accordance with Act No. 526/1990 on prices, as well as the new section 19a of the Energy Act, introduced by the 2009 Amendment. The price of electricity for the ECs, including households, is composed of regulated and non-regulated components. The regulated components include the prices for transmission and distribution of power to the ECs, coverage of expenses for transmission and distribution of power in the neighbouring distribution grids, last-instance supplier power (by material coordination), system services, contribution for promotion of renewable sources energy, cogeneration payment and also the contribution for generation from secondary electricity sources. The EMO’s services, consisting of assessment, clearing and settlement of the imbalances, as well as organisation of the day-ahead market, are also included in the regulated part of the price.

Production, supply and business activities connected with power supply to the ECs are fully subject to market mechanisms. Until 2007, electricity was traded on a wholesale basis via annual auctions and bilateral agreements between the individual electricity market participants. Since 2007, when the Prague energy stock exchange, currently entitled ‘Power Exchange Central Europe’ (PXE) was established, power futures – monthly, quarterly and annual base and peak load – have been traded on the PXE. Day-ahead and intraday trades also take place on the PXE. Information about price determination is thus more accessible to the public, in particular via the internet. Before the PXE was established, suppliers of power to the ECs acquired

and sold power via auctions and day-ahead trades, and spot operations constituted only 2 per cent of the total power trading. Due to PXE’s activities, the price for power is now constituted with the demand–supply mechanism.

The PXE’s regulated market is organised and controlled mainly pursuant to Act No. 229/1992 on commodity stock exchanges. Trading on the PXE is allowed only to the licensed ETs, which are also subject to clearing of imbalances ensured by the EMO. The possibility of trading on the PXE is established on the basis of a contract between the ETs and PXE; ETs must fulfil certain requirements before the conclusion of such contract. Trades can be concluded only in electronic form and in euros; trading takes place every business day.

The EMO is a joint stock company established by the state and the state must keep at least 67 per cent stake in the EMO’s registered capital. It is the holder of an exclusive licence for electricity market operation. The EMO’s main activity in the electricity market is the organisation of short-term electricity trading and processing and publishing data and certain information regarding the electricity market. It is also responsible for ensuring the real values of supplies and takeover of electricity for the electricity market participants. It organises the balancing market for regulation energy in collaboration with the TSO and performs certain statistical and other duties. The EMO is also responsible for certain activities related to the limitation of greenhouse gas emissions (National Registry for Emissions Trading).

On the basis of contracts on settlement of imbalances, the EMO performs the valuation of contracted and actual supply and takeover of electricity and performs the assessment, settlement and clearing of the imbalances. This activity is monopolised and the prices for such services are therefore regulated.

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## Regulation of electricity utilities – power generation

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### 3 Authorisation to construct and operate generation facilities

What authorisations are required to construct and operate generation facilities?

As a first step, certain contemplated power plants would be subject to the procedures set forth in Act No. 100/2001 on environmental impact assessment (EIA).

As with any other building activity, construction of generation facilities in the Czech Republic is generally regulated by Act No. 183/2006 (Construction Act). As a next step, the zoning permit, construction permit and finally the permit for use of the completed generation facility must be issued. For issuance of the aforementioned three permits under the Construction Act, consents must be issued by the relevant authorities that protect the public interest, eg, the water, air, soil, and health protection authorities and many others.

Certain special kinds of power generation constructions require further or special administrative procedures and permits. For example: hydroelectric plants require a special construction permit from the respective water authority, instead of a construction permit under the Construction Act and also a water disposal permit to be issued by the water authority; combustion units with nominal heat capacity above 50MW require the integrated pollution prevention permit pursuant to Act No. 76/2002 on integrated pollution prevention.

Pursuant to the 2009 Amendment, special administrative procedures formerly defined in the Energy Act, including the obligation to obtain an authorisation for construction of power generators with the total installed capacity of at least 30MW, have been repealed.

On generation, transmission, distribution and trading licensing, please see question 2. A special licence according to the Energy Act must be obtained for power generation. There is no special licence required by energy-related legislation to operate a generation facility (only the relevant business licences must be obtained).

Pursuant to the Energy Management Act, each producer of electricity from heating processes with an installed capacity exceeding 10MW is obliged, when installing a new generator or changing the construction of the existing generators, to submit the building or technical documentation to an energy audit in order to evaluate the possibilities of heat production.

Pursuant to the Energy Management Act, each energy producer is obliged, when installing a new generator or changing the construction of the existing generators, to ensure the minimum efficiency of energy use set forth in the implementation regulations.

#### 4 Interconnection policies

What are the policies with respect to interconnection of generation to the transmission grid?

The technical and business conditions for interconnection of generation to the transmission grid are set in Decree No. 51/2006 on the conditions for connection to the electricity grid and by the Transmission System Code developed by CEPS and approved by the ERO. Pursuant to the Energy Act, CEPS shall connect any generator to the transmission grid, provided that it meets all the conditions set by the Transmission System Code and the relevant legislation, and provides a request to CEPS to that extent, unless there is a demonstrable insufficiency of the transmission device capacity or the reliable operation of the transmission grid is jeopardised. The technical details for interconnection are also set out in the operation instructions of the TSO control centre.

Decree No. 51/2006 sets out general conditions and requirements for application for interconnection to the transmission grid. The TSO may require the applicant to provide a feasibility study for connection; the application must be submitted before the construction or interconnection of the respective generator. The consent of the owner of the land on which the respective generator is located must also be provided and in cases of generators with certain installed power, timetables for construction and for obtaining consents from public authorities must also be provided.

The conditions set forth in the Transmission System Code are set forth as the technical, construction and operation requirements for interconnection. The interconnection fee is regulated by the ERO.

After the TSO approves the interconnection, the TSO concludes a contract with the applicant and the applicant has a duty to pay an advance payment for possible expenses in connection with construction alterations in the transmission grid necessary to facilitate the connection. The term for connection of the generator to the transmission grid shall be agreed by the parties. In the case of solar powered plants, generators must be connected within 180 days, or in case it shall have an installed capacity of over 30MW, within one year, from the conclusion of the respective agreement, otherwise the agreement shall cease to exist.

The current Transmission System Code is effective as from June 2010.

#### 5 Alternative energy sources

Does government policy or legislation encourage power generation based on alternative energy sources such as renewable energies or combined heat and power?

Yes, the Alternative Energy Act regulates promotion of power generation from renewable energy and implements Directive No. 2001/77/EC on the promotion of power generation from renewable energy sources in the internal electricity market. The cogeneration of power and heat is promoted by the Energy Act.

Non-fossil fuel energy sources are considered to be renewable, namely, wind, solar radiation, geothermal, water, soil, air, biomass, landfill gas, sludge gas and biogas energy, as well as mine gas from closed mines.

Power generated from cogeneration and renewable energy sources is to be purchased in preference and there are special payment surcharges for power so generated.

Pursuant to Directive No. 2009/28 on promotion of use of energy from renewable sources, which repeals Directive No. 2001/77/EC, the amendment of the Alternative Energy Act and other energy legislation, which concerns alternative energy, is expected.

Power generation from renewable energy is also encouraged by certain tax incentives (for instance, 'tax holidays'). However, due to the recent 'solar boom' in the country due to the very lucrative feed-in tariff for power generated in photovoltaic power plants, the Czech government is currently announcing that it aims to restrict tax incentives with respect to production of solar power. Also, the highly subsidised purchase price mentioned above is to be substantially decreased or even limited to purchase of power only from photovoltaic power plants with certain installed capacity.

#### 6 Climate change

What impact will government policy on climate change have on the types of resources that are used to meet electricity demand and on the cost and amount of power that is consumed?

Government policy regarding climate change strictly follows the policy of the European Union. Pursuant to the draft SEC prepared by the government (which is expected to be approved by parliament before the end of 2010), government energy policy will concentrate on maximisation of energy effectiveness, ensuring the effective amount and structure of consumption of primary energy sources and maximisation of an environmentally friendly approach. By 2020, at least 13 per cent of electricity must be generated from alternative sources in the Czech Republic, although this percentage will probably be adjusted according to the 'EU Climate Package' adopted in 2009. It is, however, necessary to point out that the current version of SEC is not optimistic as regards the feasibility of achieving the goals for decreasing emissions to the amount as set out in the EU Climate Package. The current principles of the renewable energy policy are using preferential rates for power in case of alternative or cogeneration energy, preferential right of connection to the distribution or transmission grid and preferential purchase of alternative or cogeneration energy. The preferential rates for renewable power are implemented via either:

- direct sale of electricity: the regional DSO or TSO is obliged to buy out all the electricity produced from renewable sources and to conclude the contract on supply, provided that the electricity producer offers the electricity for sale under the conditions and prices as set out in the Alternative Energy Act; or
- green bonuses: where the producer does not decide to offer the electricity for direct sale as mentioned above, and it sells the electricity via the electricity market, the regional distribution grid or transmission grid operator is obliged to pay the so-called 'green bonuses' for such electricity to such producer, the bonus being expressed in koruna per MWh. Where the producer chooses the green bonus alternative, it must conclude an agreement on the supply of the electricity with another participant of the electricity market. The right to payment of the green bonuses exists even where the electricity is produced for self-consumption.

The ERO independently determines, each calendar year in advance, the purchase prices and green bonuses for renewable energy for each type of generator. The purchase prices set forth by the ERO for the upcoming calendar year cannot be lower than 95 per cent of the purchase prices valid for the current year. Due to the recent proliferation of energy generated in photovoltaic power plants, the electricity prices for ECs are expected to increase by a considerable amount in the upcoming calendar year as a result of the increase of the regulated part of the price designed to cover the expenses necessary for the renewable energy production support, for example, by way of green

bonuses or direct sale of electricity at guaranteed prices. Therefore, due to its 2010 amendment the Alternative Energy Act newly stipulates that the limited annual decrease of guaranteed purchase prices set forth by the ERO for the upcoming calendar year shall not apply for renewable energy sources with respect to which the investments recovery time is shorter than 11 years. In such case, the purchase prices for the upcoming calendar year may see a further decrease; they must, however, be set forth so that other requirements set out by the Alternative Energy Act and legislation related to setting of prices are fulfilled.

Pursuant to the Energy Act, the producer of cogeneration or secondary sources of electricity has the right to obtain a contribution fee in addition to the price of the electricity sold during the period of at least six years from the commencement of operations of such co-generation or secondary-source production facility. The contribution fee is to be paid by the TSO to the power producers directly connected to the transmission network, and by the regional DSOs to the power producers connected to their distribution network or to the local distribution network connected with their network.

According to the Czech government, the current growth of the solar energy generators in 2010 should be limited to up to 1,000MW of installed capacity to protect the stability of the grid.

## 7 Government policy

Does government policy encourage development of new nuclear power plants? How?

According to the current version of the State Energy Concept, nuclear power represents one of the main instruments for ensuring an optimal fuel mix for energy production, for use of domestic energy sources and for ensuring sufficient reserves and stability of energy production. Therefore, the development of nuclear power is one of the goals of the current government and the SEC indicates that this goal will be achieved by using administrative and legislative tools as well as international negotiations. Pursuant to the SEC, the government is aiming to create conditions for lifetime extension of the current nuclear blocks by increasing nuclear energy security, to support and expedite the procedures for negotiations on construction of new nuclear blocks and the facilitation of putting them into operation in the shortest time possible, ensuring sufficient nuclear fuel, ensuring proper legislative and administrative conditions for operation of nuclear waste repositories and making possible strategic reserves of uranium concentrates.

## Regulation of electricity utilities – transmission

### 8 Authorisations to construct and operate transmission networks

What authorisations are required to construct and operate transmission networks?

The operation of transmission networks in the Czech Republic is performed in the public interest. The licence for transmission of electricity is issued by the ERO as an exclusive licence for the entire territory of the Czech Republic. The transmission networks operator is not allowed to hold licences for electricity trade, distribution and generation. Currently, the licence holder for operation of transmission networks in the Czech Republic is CEPS, which is responsible for transmission of electricity at the transmission networks level, as well as for the development of the transmission system and for providing the system services necessary for ensuring secure and reliable operation of the electricity network. CEPS is controlled by the state (directly by 49 per cent shareholding and indirectly by the 51 per cent shareholder, Osinek, a state-owned company).

The development of the transmission grid is fully under state control and performed in the public interest.

As regards the requirements related to construction, these also include protection of the environment (eg, protection of the animals

living in the landscape, forest or agricultural land). Usually, a prior consent or at least an acknowledgement must be obtained from the respective environment protection authorities. Also other consents, such as those of the Civil Aviation Authority, telecommunications service providers, etc, must be obtained according to the features of the relevant project. For the first time, a strict environment-related rule has been included in the Energy Act by the 2009 Amendment, which provides that all newly constructed masts for high-voltage power lines must be equipped with technical means for the protection of birds. Where power lines are to be installed underground, further requirements regarding soil protection and underground activities are also to be met. In addition, as a general rule, the consent of all respective landowners must be obtained before starting the relevant construction. The same applies also with respect to the construction of distribution networks.

### 9 Eligibility to obtain transmission services

Who is eligible to obtain transmission services and what requirements must be met to obtain access?

Transmission services are provided in the public interest. Access to the transmission grid is regulated and the right of regulated access to the transmission services (that is, the right to use transmission services under the conditions set by the Energy Act and for regulated prices set by the ERO) is granted to all entities that hold the licence for power generation, distribution or trading. Transmission services shall be granted to anybody who requests such services and fulfils the statutory conditions and the conditions set by the Transmission System Code, unless there is a demonstrable insufficiency of the transmission device capacity or the reliable operation of the transmission grid would be so jeopardised.

The producers of energy from alternative sources, as well as cogeneration of electricity and electricity generation from secondary sources have the right to be connected on a preferential basis.

The transmission services are provided based on a contract on transmission of electricity concluded between the TSO and EP, ET or any authorised customer (any EC), and such entity undertakes to pay the regulated price.

### 10 Government incentives

Are there any government incentives to encourage expansion of the transmission grid?

No, the transmission grid is operated and developed by a state-controlled company on the basis of an exclusive licence. CEPS has a long-term investment plan with an outlook up to 2022, which contemplates, among other things, the strengthening and modernisation of the transmission grid as the Czech Republic has a strategic position in Central Europe with respect to cross-border electricity transmission. The aim of further development of the transmission grid is also contemplated in the current State Energy Concept.

### 11 Rates and terms for transmission services

Who determines the rates and terms for the provision of transmission services and what legal standard does that entity apply?

The prices for transmission services are regulated by the ERO in accordance with the ERO Decree No. 140/2009 on the manner of regulation in the energy sector, the Act on Prices and the Energy Act. The prices are determined according to a regulation formula set forth in the aforementioned Decree, where certain parameters to be inserted into the formula are described by the ERO:

- for the respective regulation period (ie, five consecutive calendar years), there are a number of parameters – in this case seven items, eg, the effectiveness factor; and

- for the respective regulation year (ie, the next calendar year), there are 21 different items to be announced by the ERO, eg, the consumer price index (CPI).

In certain cases (eg, where certain data used in the announcement of the ERO was incorrect, or legislative changes have occurred after the respective period), it is possible that the parameters may be modified during the respective regulation period or regulation year by the ERO.

The price for transmission of electricity is made up from the price for the reservation capacity and the price for the use of the transmission grid.

The parameters are to be announced to the licence-holder within six months before the beginning of the respective regulation period at the latest; certain parameters have to be announced at an even earlier time (for answers regarding the legal regulations, see question 12).

## 12 Entities responsible for assuring reliability

Which entities are responsible for assuring reliability of the transmission grid and what are their powers and responsibilities?

CEPS, as the transmission grid operator with an exclusive licence, is responsible for assuring transmission grid reliability. It is also responsible for the development of the transmission grid and for provision of transmission services. It manages the electricity flow in the transmission grid also with respect to the transmission of power between the interconnected grids of other countries in cooperation with the distribution grid operators. It is responsible for ensuring the grid support services on the transmission system level.

CEPS is not allowed to hold the licence for electricity trading, distribution and generation.

The powers and responsibilities of CEPS are set forth in the Energy Act. It is allowed, among other things, mainly to acquire support services and electricity for covering losses of electricity in the transmission grid and for its proper use. CEPS may purchase electricity abroad to prevent emergency and failure states. CEPS may restrict or suspend the power supply to the participants of the electricity market in certain circumstances and modify or suspend power supply from generators, as well as import power from abroad or export power to ensure reliable transmission grid operation. CEPS is also allowed to install and operate transmission grid facilities on third-party land under conditions stipulated by law.

CEPS and the DSOs (and their dispatching service divisions) have certain duties and rights, which are set forth by the rules on emergencies in the energy sector and on energy dispatching (see Acts Nos. 80/2010 and 79/2010).

CEPS has many duties including, among others, interconnecting anyone who fulfils the conditions for connection and ensuring non-preferential treatment for transmission of electricity to any party in the electricity market. In addition, CEPS must establish and maintain a technical control centre, and issue and apply the Transmission System Code.

In general, CEPS is responsible for all activities necessary for the provision of transmission services and its powers are determined in the Energy Act mainly in connection with the necessity for a due and reliable provision of the transmission services and other related activities.

## Regulation of electricity utilities – distribution

### 13 Authorisation to construct and operate distribution networks

What authorisations are required to construct and operate distribution networks?

The construction and operation of a distribution grid is performed in the public interest and only on the basis of a licence granted by the ERO for a certain area, defined in the licence. Once such licence has been granted, it is possible to develop the distribution grid only on

the basis of the procedures set forth in the Construction Act and the Energy Act and related legislation, including the Transmission System Code. Construction and operation of the distribution network must also comply with the particular distribution licence.

As regards the requirements related to the construction, see question 8, where the requirements for construction of transmission networks are dealt with; the requirements for construction of transmission networks apply similarly to construction of distribution networks.

The Energy Act and its implementation legislation, as well as the Transmission System Code, regulate in detail the particular technical requirements that must be met in order to ensure, among other things, the security and reliability of the transmission system in the Czech Republic.

### 14 Access to the distribution grid

Who is eligible to obtain access to the distribution grid and what requirements must be met to obtain access?

Anyone who complies with the conditions set by the Energy Act, its related legislation (in particular Decree No. 51/2006 on rules for the interconnection to the electricity grid) and the Distribution Grid Operation Rules and requests for connection, will be allowed to connect to the distribution grid by the DSO. The rules for interconnection described under question 4 apply similarly to connection to the distribution grid as both the regulations are governed by Decree No. 51/2006.

Distribution Grid Operation Rules are developed by DSOs, must be in compliance with the Transmission System Code and are subject to ERO approval.

### 15 Rates and terms for distribution services

Who determines the rates or terms for the provision of distribution services and what legal standard does that entity apply?

The prices for distribution services are regulated by the ERO in accordance with the ERO Decree No. 140/2009 on the manner of regulation in the energy sector, the Act on Prices and the Energy Act. The prices are determined according to regulation formulas set forth in the aforementioned Decree, independently for the distribution of electricity by the regional DSOs and by the local DSOs. The rules for determination of parameters to be inserted into the formula are similar to those set forth for the transmission services.

The price for distribution of electricity is composed of the price for the reservation capacity and the price for the use of the distribution grid; in case of low-voltage level distribution, the reserved capacity is determined by the power value of the main circuit breaker. The price also includes the coverage of costs for transmission services and distribution in adjacent distribution grids, and by coverage of a part of expenses for higher voltage levels of the distribution grid. The terms of the distribution services are set forth mainly in the Energy Act and the Rules for Operation of the Distribution Grid, which are issued independently by each DSO and must comply with the Transmission Grid Code. The main obligations of the DSOs set forth in the Energy Act are: the obligation to ensure the reliable operation of the distribution grid and its development within the territory set forth in the licence; the obligation to enable distribution of the electricity based on the contracts concluded; and the obligation to manage flows of power in the distribution grid by respecting the exchange of power between the distribution grids and the transmission grid. DSOs may restrict or suspend the power supply to participants of the electricity market in certain circumstances and modify or suspend power supply from generators. DSOs have many duties including, among others, interconnecting anyone who fulfils the conditions for connection and ensuring non-preferential treatment for transmission of electricity to any party in the electricity market. In addition, DSOs must establish and maintain a technical control centre with respect

to distribution services at the 110kV level and issue and observe the Rules for Operation of the Distribution Grid. The Energy Act sets forth other particular duties of the DSOs.

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### Regulation of electricity utilities – sales of power

#### 16 Approval to sell power

What authorisations are required for the sale of power to customers and which authorities grant such approvals?

A licence for electricity trading is necessary in order to sell power (with certain exceptions – see question 2). It is issued by the ERO for a maximum period of five years. The conditions for granting licences in the energy sector are set in the Energy Act and the ERO implementation Decree No. 426/2005, setting forth details for granting licences in the energy business. For a natural person to obtain a licence, the applicant, if a natural person, must be at least 18 years of age, legally competent, of a good moral character and specially qualified (or must nominate a representative with such qualification). Where the applicant is a legal entity, members of the entity's statutory body must fulfil the conditions set forth for the natural person and a specially qualified representative must be nominated. The applicant must also provide evidence of the qualification and have sufficient financial resources to be capable to ensure payment of its obligations for a period of at least five years.

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#### 17 Power sales tariffs

Is there any tariff or other regulation regarding power sales?

The sale of electricity is regulated by the Energy Act and by ERO. Currently, Decree No. 408/2009 and Decree No. 140/2009 regulate the manner of setting the electricity sale tariffs. The price for electricity is divided into two parts: the regulated part (transmission, distribution, system services, etc) and the non-regulated part (the sale of the actual power to the ECs). Most power sale contracts are based on the 'take-or-pay' principle.

Electricity customers are divided into different groups based on the manner of power utilisation and the voltage level. The two main groups are EPs and ETs on one side, and ECs on the other side.

There is a wide scale of contracts on the electricity market. A typical contract for sale of power to the EC is the contract on associated services of electricity supply through which the EP or ET supplies both power and related services to the EC; in such instance, the price is made up of the unregulated price for power and the liability of the provider for imbalances, and the regulated price for distribution and other services. The other types of contract regulated by the Energy Act include contracts on provision of transmission services or distribution services or contracts on provision of support services.

Contracts available in power trading include contracts on access to the short-term electricity market, on bilateral trades between the electricity market participants, contracts on access to the balancing market with regulation electricity and on supply of regulation energy.

The sales of power take place mainly at the PXE, but also through the EMO with respect to the electricity balance market, which is organised by the EMO. The sales of electricity through these two entities are organised on the basis of contracts between the participants. In order to become a participant and to be able to sell and purchase electricity on these markets, it is necessary to conclude contracts with the respective entities and fulfil certain conditions prescribed by law and the internal regulations of these entities.

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#### 18 Rates for wholesale of power

Who determines the rates for sales of wholesale power and what standard does that entity apply?

Since 2007, the existing system of wholesale of power organised by means of annual auctions by CEZ, as the main electricity producer in

the Czech Republic and by means of bilateral contracts between the EPs and the ETs, was replaced by continual trading on the PXE.

Currently, the rates for sales of power are not regulated and are subject to trading mechanisms.

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#### 19 Public service obligations

To what extent are electricity utilities that sell power subject to public service obligations?

First, as previously mentioned, DSOs and TSOs must, broadly speaking, connect anyone who fulfils the requirements set forth in the relevant regulations, unless it is not technically possible to do so.

Second, any EP is required to offer operationally and commercially redundant generation capacities, upon instructions of the TSO and DSOs, for the purposes of ensuring the security and reliability of the electricity system operation and for prevention and solution of emergency states. In the case of a state of emergency declared by CEPS, the EPs must follow the instructions of the electricity dispatchings, including mandatory generation, to eliminate the consequences of the state of emergency. The EPs and the DSOs are furthermore obliged to provide their services outside the scope of their licences in case of emergency, in the public interest and pursuant to a decision of the ERO, which must be issued for a determined period of time, which cannot exceed a period of 12 months. The accounting for such activities must be performed independently in order to show the losses incurred.

The last-instance suppliers are defined by the Energy Act as ETs who, before the unbundling procedure in the Czech Republic was completed, formed the same concern with the respective DSO holding the licence in the relevant territory. The last-instance suppliers are obliged to supply electricity to the ECs, the former supplier of which has terminated its activities, upon notification from the EMO to the last-instance supplier. Such obligation persists for no longer than six months.

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### Regulatory authorities

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#### 20 Policy setting

Which authorities determine regulatory policy with respect to the electricity sector?

The primary legislation is adopted by the Czech parliament (the draft laws are usually prepared and submitted by the government) and the public authority bodies adopt secondary acts for implementation of the primary one; in case of the Energy Act, such authorities are the ERO and the MIT.

The Czech legislation implements the energy laws of the European Union and must comply with them. The EU adopts legislation in accordance with the EU Common Energy Policy.

The entities with partial regulatory powers, but not being public authorities, are the EMO (which issues the commercial terms and conditions of the EMO), the LSO (which issues the Transmission System Code), and the DSOs (which issue the distribution system operation rules).

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#### 21 Scope of authority

What is the scope of each regulator's authority?

As regards the public authorities involved in the electricity sector, the MIT is involved in regulation of the energy sector and in preparation of the SEC. In the electricity sector, it mainly provides its opinions regarding the construction of new power sources and direct lines pursuant to the Energy Act. The MIT is also involved in fulfilling the obligations ensuing from international agreements, including obligations to inform the EU Commission pursuant to EU energy legislation. It is also responsible for issuing tenders for new production capacities, when necessary.

The ERO mainly issues licences in the energy sector, imposes obligations to provide services beyond the scope of the licences and imposes obligations to offer operationally and commercially redundant generation capacities to the EPs, determines regulated electricity prices, supports economic competition in the energy sector, promotes utilisation of renewable and secondary sources and protects consumers' interests in the energy sector segments where competition is not possible. The ERO supervises and creates conditions for satisfaction of all reasonable requirements for supply of electricity. It also exercises its powers pursuant to the EC Regulation No. EC/1228/2003 on conditions for access to the grid for cross-border electricity exchange and shall exercise its powers as a regulator within the scope of the new EC Regulation No. EC/714/2009.

There are also other public authorities that are involved in the electricity sector, mainly the State Energy Inspection (SEI), which oversees the compliance with obligations set forth by the energy regulations. The Ministry of Environment is involved in environmental protection, as well as the Czech Environment Inspection. The EMO as a private entity has an exclusive licence for performing the activities of the market operator.

## 22 Establishment of regulators

How is each regulator established and to what extent is it considered to be independent of the regulated business and of governmental officials?

The MIT is the supreme state administration body and was established by law. It issues the implementation legislation pursuant to the Energy Act, while respecting the policy of the government and internal regulations. The head of the MIT, the minister, is a member of the Czech government.

The ERO is also a supreme state administration body, which was established pursuant to the Energy Act and Act No. 2/1969. It is independent to the extent that it issues the implementation legislation within the bounds of its powers, nevertheless it is obliged to respect the government's policy and internal regulations.

CEPS was established in 1998 as a joint-stock company by CEZ (the largest electricity producer in the Czech Republic), as the formation of an individual transmission grid operator was required by EC Regulation No. 96/92/EC (see question 12).

The EMO was established in 2001 on the basis of the Energy Act as a joint-stock company, owned 100 per cent by the state (see question 2).

The DSOs are private entities with certain powers and responsibilities granted by law.

In connection with the above it is important to note that the Transmission System Code, Distribution System Operation Rules and distribution tariffs are approved by the ERO. The EMO's terms and conditions are also approved by the ERO.

## 23 Challenge and appeal of decisions

To what extent can decisions of the regulator be challenged or appealed, and to whom? What are the grounds and procedures for appeal?

As a rule, the procedures for issuing individual decisions under the Energy Act and the Act on Energy Management are subject to regulations set by the Administration Procedure Code (Act No. 500/2004, as amended).

The Administration Procedure Code, among other things, determines the rules for initiation, course and termination of the administration proceedings, and also determines the possible remedies against decisions of the relevant bodies. In addition, the Code of Administrative Court Procedure determines also the full jurisdiction of the Czech courts for the administration matters, so also the remedy to the independent court is possible.

Decrees or decisions of a regulatory body that are generally binding may be modified only by the authority that issued such decree or decision. Alternatively, this decision may be abolished for conflicts with constitution laws, primary laws or international treaties.

## Acquisition and merger control – competition

### 24 Responsible bodies

Which bodies have the authority to approve or block mergers or other changes in control over businesses in the sector or acquisition of utility assets?

The Office for the Protection of Competition (OPC) is the central state administration authority entrusted with protection of competition in the Czech Republic and is responsible for approving the concentration of undertakings. If trade between European Union member states may be affected, the European Commission may have the authority instead of the OPC.

### 25 Review of transfers of control

What criteria and procedures apply with respect to the review of mergers, acquisitions and other transfers of control? How long does it typically take to obtain a decision approving or blocking the transaction?

In cases of concentration without community dimension, the provisions of Act No. 143/2001 on protection of economic competition shall apply.

The concentration of undertakings is subject to the consent of the OPC, provided that:

- the net turnover of all concentrating undertakings achieved in the last financial year in the Czech market is higher than 1.5 billion koruna, and at least two of the concentrated undertakings achieved a net turnover that exceeds 250 million koruna in the Czech market in the last financial year; or
- the net turnover achieved in the last financial year exceeds 1.5 billion koruna in the Czech market and the net turnover achieved worldwide by another concentrating company in the last financial year exceeds 1.5 billion koruna.

The procedure of assessment of the OPC is initiated upon proposal. Since the initiation of the procedures is published in the Commercial Bulletin, objections may be raised. Where the OPC has no concerns with respect to the proposed concentration, the proceedings shall be finished by approval within 30 days. In certain cases the OPC may request the Commission to perform the assessment. Where the OPC does not issue the decision within five months of submitting the proposal, the consent is deemed to be issued. In case the undertakings which are subject to concentration have a joint interest in the relevant market with a stake of less than 15 per cent and none of them has an interest in a market vertically related to the relevant market, or their stake on each of such vertically related markets is below 25 per cent, a simplified procedure shall apply pursuant to which the OPC shall issue a decision within 20 days from the commencement of the proceedings if it requires a normal procedure to take place, otherwise the concentration shall be deemed to be approved.

The concentration has a Community dimension where either: (i) the combined aggregate worldwide turnover of all the undertakings concerned is more than €5 billion and the aggregate Community-wide turnover of each of at least two of the undertakings concerned is more than €250 million and none of the undertakings concerned achieves more than two-thirds of its aggregate Community-wide turnover within one and the same member state; or, (ii) the thresholds set forth in point (i) are not met, but:

- the combined aggregate worldwide turnover of all the undertakings concerned is more than €2.5 billion;

**Update and trends**

At present, one of the main goals of the Czech government in the energy sector is to ensure the use of national resources and to avoid energy instability, thus preferring construction of new-generation coal generators, which shall replace the current ones, and strengthening and modernisation of electricity grid (in particular transmission networks); development of nuclear energy in the Czech Republic is also subject to the government's preferences. In addition, the government must ensure that the greenhouse gas emission reduction limits are observed, therefore supporting the development of new

power plants utilising renewable sources. On the other hand, in particular this year has proved that it is very difficult to find the correct balance between government support and the rate of implementation of such power plants and its effect both on the stability of the grid and economic consequences, namely the impact on electricity prices for end customers. Accordingly, 2011 is expected to bring about major changes to government support, especially for photovoltaic power plants, namely a radical decrease of the guaranteed feed-in tariffs.

- in each of at least three member states, the combined aggregate turnover of all the undertakings concerned is more than €100 million;
- in each of at least three member states included for the purpose of the second point above, the aggregate turnover of each of at least two of the undertakings concerned is more than €25 million; and
- the aggregate Community-wide turnover of each of at least two of the undertakings concerned is more than €100 million and none of the undertakings concerned achieves more than two-thirds of its aggregate Community-wide turnover within one and the same member state.

Where one of the above conditions is satisfied, the European Commission must assess the proposal for concentration pursuant to EC Regulation No. 139/2004, and may refer the case to the OPC.

**26 Prevention and prosecution of anti-competitive practices**

Which authorities have the power to prevent or prosecute anti-competitive or manipulative practices in the electricity sector?

The OPC and the European Commission are responsible for prosecution and preventing manipulative and anti-competitive practices; however, certain anti-competitive practices, such as unfair competition, are directly subject to court proceedings. The SEI is responsible for control of fulfilment of the price regulations in the electricity sector and may impose sanctions for breach of the obligations of the electricity sector participants.

**27 Determination of anti-competitive conduct**

What substantive standards are applied to determine whether conduct is anti-competitive or manipulative?

The standards are determined directly in articles 101 and 102 of the Treaty on the Functioning of the European Union (formerly articles 81 and 82 of the European Community Treaty). All agreements between undertakings, decisions by associations of undertakings and concerted practices that may affect trade between member states, and that have as their object or effect the prevention restriction or distortion of competition within the common market, and abuse of a dominant position, are determined as anti-competitive conduct.

The Act on Protection of the Economic Competition defines the anti-competitive conduct similarly to the Treaty on the Functioning of the European Union as all agreements between undertakings, decisions of associations of undertakings and concerted practices that affect or may affect economic competition, and the abuse of a dominant position.

**28 Preclusion and remedy of anti-competitive practices**

What authority does the regulator (or regulators) have to preclude or remedy anti-competitive or manipulative practices?

All agreements between undertakings, decisions by associations of undertakings and concerted practices that lead or may lead to effects

on the competition are generally forbidden and invalid unless the law sets forth otherwise or the European Commission or the OPC allows an exception. The OPC has the authority to withdraw the exception in case the agreement concerned does not meet conditions stipulated by law.

The OPC has the power to initiate an investigation upon receipt of a complaint or at its own instigation. It can request information necessary for conducting the investigation from any entity operating on the market or from state bodies (for example, ERO). Upon completion of proceedings, the OPC may issue a decision prohibiting further performance of an anti-competitive agreement or practice or a decision prohibiting to continue abusive behaviour. The OPC is further empowered to impose fines (according to Czech law, even fines in the amount of up to 10 per cent of the net turnover of the respective undertaking can be imposed) or remedial measures. It is also allowed to apply articles 101 and 102 of the Treaty on the Functioning of the European Union.

**International****29 Acquisitions by foreign companies**

Are there any special requirements or limitations on acquisitions of interests in the electricity sector by foreign companies?

There are no special limitations for acquisitions of interests in Czech companies, except as mentioned in question 2 with respect to CEPS, EMO and the DSOs.

**30 Cross-border electricity supply**

What rules apply to cross-border electricity supply, especially interconnection issues?

The conditions of access for the cross-border electricity trading are currently set forth in the EC Regulation No. 1228/2003, on conditions for access to the cross-border electricity market system, as well as in the Transmission System Code and ERO Decree No. 541/2005 on electricity market rules. Cross-border trade can be effectuated only up to the amount of the capacity reserved on the basis of explicit auctions organised by the TSO, or on the basis of the transmission capacity obtained by assignment of the reserved cross-border transmission capacity from another person or entity, or on the basis of implicit auctions or by using arrangement of electricity transmission within a business day. The capacity is assigned on the basis of price offers of the auction participants. The lowest offered price wins and the assignment becomes effective at the moment of payment of the auction price in the term determined in the auction rules. The realisation cross-border trade scheme must be submitted to the TSO for utilisation of the reserved capacity and the capacity is reserved only until the expiry of the term determined for submitting the realisation schemes. The part of the capacity reserved and not utilised shall be offered to the participants in the daily auctions.

Pursuant to the aforementioned ERO Decree on electricity market rules, the regulated access to the transmission grid and to the distribution grid can be effectuated on the basis of an agreement on cross-border electricity transmission concluded with the TSO; the

TSO undertakes to transport a certain amount of electricity abroad or from abroad or from one transmission grid to another in such an agreement. An agreement with the EMO on settlement of eventual imbalances must also be concluded.

On 13 July 2009, a new EC Regulation No. 714/2009 was adopted, which repeals Regulation No. 1228/2003, and is taking effect from 2011; the new regulation sets forth framework rules for cross-border exchange of electricity and establishes a harmonised compensation mechanism and system of transmission charges, as well as a harmonised system for allocation of available capacities of the respective national transmission systems.

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#### Transactions between affiliates

##### 31 Restrictions

What restrictions exist on transactions between electricity utilities and their affiliates?

The transactions within groups of entities are generally restricted by the regulations on business groups set forth in the Czech

Commercial Code (Act No. 513/1991) and Czech tax laws. Pursuant to these laws, all transactions within business groups and with affiliates must be at arm's length and must comply with certain formal requirements.

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##### 32 Enforcement and sanctions

Who enforces the restrictions on utilities dealing with affiliates and what are the sanctions for non-compliance?

Company shareholders or creditors apply for enforcement of the restrictions in this respect, and the courts adopt the relevant decisions. Certain activities, which are in conflict with mandatory provisions of law, can even be invalid and the damage caused thereby must be reimbursed. The remedies thus have prevalently a private law nature.

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